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OLC 78-0487/18

29 August 1978

Pauley

MEMORANDUM FOR: Legislative Counsel

FROM:

Assistant Legislative Counsel

SUBJECT: S. 2640, the Civil Service Reform Act

1. As noted in a memorandum prepared by the undersigned on 25 August 1978, the Senate last week passed their version of the President's Civil Service Reform Act. The following, for your information, is a very brief precis of the most important sections of that bill and their anticipated affect, if any, on this Agency.

2. In general the bill, as a total reorganization of the Civil Service:

--Provides for an independent Merit Systems Protection Board and special counsel to adjudicate employee appeals and serve as the "watchdog" of the merit system;

--Provides new protection for employees ("whistle-blowers") who disclose illegal or improper Government conduct or activities;

--Empowers a new Office of Personnel Management (OPM) to supervise personnel management in most agencies comprising the Executive Branch;

--Establish principles whereby decisions on promotions, pay or employee discipline be based solely on performance;

--Creates new standards for employee dismissals as well as streamlining the process for dismissal;

--Creates a new Senior Executive Service (employees above the grade of GS-15) whereby tenure and rewards will be based on accomplishment;

--Authorizes the OPM to conduct research in public management;

--Creates a new statutory base for improvement of labor-management relations including the establishment of the Federal Labor Relations Authority (FLRA).

3. CIA, by virtue of its historical exemption from most statutes applicable to the entire Civil Service and in consideration of its unique mission, is, by in large, exempt either in toto or exempt vis-a-vis classified material from the major provisions of the bill as described below.

--Title I - Merit Principles and Prohibited Personnel Practices: CIA is by name specifically excluded (along with DIA, NSA, the Foreign Service and several other agencies) from Merit System Principles. The exclusion presumes that CIA will continue to adhere to a system of "merit principles" but that, due to our excepted status, such system will be overseen by the Senate Select and House Permanent Select Committees on Intelligence as well as the Intelligence Oversight Board and, at least in the case of CIA, the Inspector General. CIA is also excluded from GAO audit provisions in this Title.

--Title II - OPM: Retains largely the same authorities as the present Civil Service Commission.

--Title II - Special Counsel: The Special Counsel's primary authority relates back to the delineated prohibited personnel practices (PPP) of Title II from which this Agency is exempt, thus making CIA outside reach of the special counsel as far as his PPP authority goes. The special counsel is, however, granted additional authority to receive employee complaints and demand Agency investigation of alleged mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health or safety. This new section, added on the floor of the Senate, reaches all Government agencies but specifically excludes information disclosure of which is specifically prohibited by statute or Executive Order. Upon receipt of such a complaint, the special counsel shall transmit the information to the appropriate Agency head and thereafter the special counsel may require the Agency head to (1) conduct an investigation of the complaint, e.g., "rats in the main CIA cafeteria" and (2) require a written report delineating the results of the investigation and steps taken to remedy the situation assuming the complaint was valid. The report will thereafter be transmitted to the President, Congress and the complainant. This section, although not the best of all worlds as it may impose a new paperwork burden, does not cause us serious concern. In the first place the special counsel is not given de novo investigatory power, i.e. he cannot, on his own initiative, pry into Agency records. Moreover, by virtue of the DCI's express statutory authority to protect sources, methods and properly classified information, it may be argued that any report required under this section will necessarily not involve delicate information. Notwithstanding that argument, we will attempt to ensure that the Conference language makes this clear or if possible we receive a total CIA exemption.

--Title II - Performance Appraisal: CIA is specifically exempted.

--Title III - Staffing: Not applicable to CIA.

--Title IV - Senior Executive Service: CIA is again specifically exempted from the newly created Senior Executive Service.

--Title V - Merit Pay: This Title is not applicable to CIA because CIA is exempt from the Pay Classification Act.

--Title VI - Personnel Research: CIA is specifically exempted.

--Title VII - Labor-Management Relations: CIA has an exemption from this codification of labor and management rights in the Federal sector.

4. It is therefore the position of this office in coordination with the Office of General Counsel that the Civil Service Reform Act as embodied in the U.S. Senate version largely takes into consideration the special mission of this Agency and is generally acceptable, though further changes will have to be made in the special counsel provisions of Title II to fully protect CIA equities.



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Assistant Legislative Counsel

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